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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76936; File No. SR-ISE-2016-02)

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Primary Market Makers

January 20, 2016

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 6, 2016, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to correct, and clarify, .03 of Supplementary Material to Rule 803, Obligations of Market Makers, which describes the responsibilities and privileges of a Back-Up Primary Market Maker (“Back-Up PMM”) that takes the place of a Primary Market Maker (“PMM”) when that PMM fails to have a quote in the system. This amendment will specify the PMM responsibilities and privileges that do not apply to Back-Up PMMs. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make corrections to, and clarify, .03 of Supplementary Material to Rule 803, Obligations of Market Makers, which describes the responsibilities and privileges of a Back-Up PMM that takes the place of a PMM when that PMM fails to have a quote in the system. This amendment will specify the PMM responsibilities and privileges that do not apply to Back-Up PMMs.

In 2006, ISE adopted a rule change that permits Competitive Market Makers (“CMMs”) that are also PMMs on the Exchange to voluntarily act as Back-Up PMMs when the appointed PMM has technical difficulties that interrupt its participation in the market.<sup>3</sup> Then, in 2015, the Exchange amended the process by which a Back-Up PMM is chosen to replace a PMM that fails to have a quote in the System.<sup>4</sup>

In these situations, a Back-Up PMM assumes the responsibilities and privileges of a PMM under ISE rules with respect to any class in which the appointed PMM fails to have a

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<sup>3</sup> Securities Exchange Act Release No. 34-53419 (March 6, 2006), 71 FR 12758 (March 13, 2006) (SR-ISE-2005-50).

quote in the ISE System, except that a CMM does not become subject to the PMM's requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed. Instead, under ISE Rule 804(e)(2), the CMM (or Back-Up PMM) is required to maintain continuous quotations in that class or series for 60% of the time the options class is open for trading on the Exchange, provided, however, that a CMM (or Back-Up PMM) is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives preferenced orders.<sup>5</sup>

Additionally, while PMMs are required to quote LEAPS and adjusted series, a CMM that has been appointed as the Back-Up PMM is not subject to these requirements due to their initial status as a CMM.<sup>6</sup>

Currently, .03 to Supplementary Material to Rule 803 states that, when a PMM fails to have a quote in the System, a Back-Up PMM "assumes all of the responsibilities and privileges of a" PMM. Unlike the wording of this rule text, however, ISE's practice has always been to hold CMMs that are appointed as Back-Up PMMs to the above standards/exceptions. ISE now proposes to amend .03 to Supplementary Material to Rule 803 to reflect ISE's longstanding standards/exceptions applicable to a CMM that has been appointed as the Back-Up PMM in a particular class.

## 2. Statutory Basis

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<sup>4</sup> Securities Exchange Act Release No. 34-76508 (November 30, 2015), 80 FR 74826 (November 30, 2015) (SR-ISE-2015-42).

<sup>5</sup> See Rule 804(e)(2)(iii).

<sup>6</sup> See .02 of Supplementary Material to Rule 804 (The CMM quoting obligation "does not include adjusted option series, nor series with a time to expiration of nine (9) months or greater for options on equities and exchange-traded funds or with a time to expiration of twelve (12) months or greater for index options.")

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5)<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest, and would remove impediments to and perfect the mechanism of a free and open market, because it makes a correction and clarifies ISE's rule text to more accurately reflect the responsibilities and privileges of a Back-Up PMM. This will provide members with a better understanding of their responsibilities and privileges when acting as a Back-Up PMM in situations where a PMM fails to have a quote in the System. Additionally, Back-Up PMMs that are CMMs are not held to the heightened standards of PMMs for continuous quoting, LEAPS, and adjusted series due to the difficulty associated with meeting the standards for each on a short-term basis. For example, for continuous quoting, when a Back-Up PMM assumes responsibility for quoting a series or class, a Back-Up PMM could have problems meeting the continuous quoting requirement during such a short period of time. Similarly, a CMM that is a Back-Up PMM is not required to quote LEAPS because of the difficulty in pricing these options due their 9 month or greater time to expiration. Also, for adjusted series, the effect corporate actions have on certain underlying equity prices makes pricing these options challenging.

B. Self-Regulatory Organization's Statement on Burden on Competition

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE is correcting and clarifying its rule text to accurately reflect the responsibilities and privileges of a Back-Up PMM when a PMM fails to have a quote in the System.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2016-02 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2016-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2016-02 and should be submitted by **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Brent J. Fields  
Secretary

[FR Doc. 2016-01392 Filed: 1/25/2016 8:45 am; Publication Date: 1/26/2016]

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<sup>11</sup> 17 CFR 200.30-3(a)(12).